

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4649 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

BAI DHANUBEN WD/O MASHRUHAI BUTABHAI VAGHRI

Versus

STATE OF GUJARAT

Appearance:

Shri H.D.Chudasama, Advocate, for the Petitioners.

Shri T.H.Sompura, Assistant Government Pleader, for the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 25/07/96

ORAL JUDGEMENT

Though this matter is only for considering the grant of interim relief, since it can be disposed of on a

short point, I have thought it fit to dispose it of rather than to be kept lingering on for years.

2. The order passed by the Mamlatdar and Agricultural Land Tribunal at Dhandhuka (the First Authority for convenience) on 22nd May 1987 in Ceiling Case No.33 of 1987 as affirmed in appeal by the order passed by the Deputy Collector (Land Reforms) Appeals at Ahmedabad (the Appellate Authority for convenience) on 30th January 1993 as further affirmed in revision by the decision rendered by the Gujarat Revenue Tribunal at Ahmedabad (the Tribunal for convenience) on 1st September 1994 in Revision Application No.TEN.BA.914 of 1994 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, the First Authority declared the holding of the petitioners to be in excess of the ceiling limit by 12 acres 39 gunthas but declared the surplus to the tune of 13 acres 18 gunthas as the original landholder (the deceased for convenience) being the predecessor-in-title of the present petitioners did not file the declaration under the Gujarat Agricultural Land Ceiling Act, 1960 (the Act for brief) with respect to his holding of agricultural lands.

3. The facts giving rise to this petition move in a narrow compass. The deceased was found holding certain agricultural lands to the tune of 66 acres 39 gunthas at village Fedra taluka Dhandhuka. It appears that he did not file the necessary declaration under the Act. His holding however came to the notice of the concerned authority and a notice was issued to him and even thereafter the deceased did not appear before the First Authority. Thereupon, the case was registered as Ceiling Case No.33 of 1987. Thereafter, by the order passed on 22nd May 1987 in the aforesaid proceeding, the First Authority declared the holding of the petitioners to be in excess of the ceiling limit by 12 acres 39 gunthas but declared in all 13 acres 18 gunthas of land to be surplus under section 16 (2) of the Act. Its copy is at Annexure-A to this petition. It appears that the matter was carried in appeal and it was dismissed as time-barred by the order passed by the Appellate Authority on 5th October 1987. That order was carried in revision before the Tribunal. It came to be registered as Revision Application No.TEN.BA.226 of 1988. By its decision rendered on 30th October 1987 in the aforesaid revisional application, the Tribunal set aside the appellate order passed on 5th October 1987 and remanded the matter to the Appellate authority for its fresh decision according to law. In the meantime, the deceased had breathed his last

leaving behind him the present petitioners as his heirs and legal representatives. They were therefore substituted as the heirs and legal representatives of the deceased in the appellate proceeding. The appeal came to be registered as Ceiling Appeal No.13 of 1992. By the order passed on 30th January 1993 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure-B to this petition. The aggrieved petitioners carried the matter in revision before the Tribunal under section 38 of the Act. It came to be registered as Revision Application No.TEN.BA. 914 of 1993. By its decision rendered on 1st September 1994 in the aforesaid revisional application, the Tribunal rejected it. Its copy is at Annexure-C to this petition. The aggrieved petitioners sought review of the decision at Annexure-C to this petition. It came to be registered as Review Application No.TEN.CA.6 of 1995. By its decision rendered on 30th March 1995 in the aforesaid review application, the Tribunal rejected it. Its copy is at Annexure-D to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition as further affirmed in revision and review by the decisions at Annexures-C and D respectively to this petition.

4. The petitioners claim the benefit of section 6 (3B) of the Act. It appears that the petitioners were not given an opportunity to establish their case in that regard. The petitioners have produced before this court birth certificates of three children showing them to be minors at the relevant time. If they were minors at the relevant time, the deceased would be and after his demise the present petitioners would be entitled to claim the benefit of section 6 (3B) of the Act. It appears that this aspect of the matter could not be considered by the authorities below, and as such it would be desirable to remand the matter to the First Authority for the purpose.

5. It may be noted that the ceiling limit for the area in which the lands involved in this petition are situated is 54 acres. If, by virtue of section 6 (3B) of the Act the deceased was and on his demise the petitioners are entitled to the benefit thereunder, there would be no excess land in the holding of the deceased and no land could be declared surplus. In that case, no action would be called for under section 16 (2) of the Act.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition as further affirmed in revision and review by the decisions at Annexures-C and D respectively to this petition deserves to be quashed and set aside. The matter deserves to be remanded to the First Authority for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine.

7. In the result, this petition is accepted. The order passed by the Mamlatdar and Agricultural Land Tribunal at Dhandhuka (the First Authority for convenience) on 22nd May 1987 in Ceiling case No.33 of 1987 at Annexure-A to this petition as affirmed in appeal by the appellate order passed by the Deputy Collector (Land Reforms) Appeals at Ahmedabad on 30th January 1993 in Ceiling Appeal No.13 of 1992 at Annexure-B to this petition as further affirmed in revision by the decision rendered by the Gujarat Revenue Tribunal at Ahmedabad on 1st September 1994 in Revision Application No.TEN.BA.914 of 1993 at Annexure-C to this petition as further affirmed in review by the decision rendered by the Gujarat Revenue Tribunal at Ahmedabad on 30th March 1995 in Review Application No.TEN.CA.6 of 1995 at Annexure-D to this petition is quashed and set aside. The matter is remanded to the First Authority for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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